Received April 9, 2001
/s/ JH
CLERK OF DISTRICT COURT
DISTRICT OF ARIZONA

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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| MICHAEL MCNEILL)<br>plaintiff, )<br>vs. )<br>)<br>TOWN OF PARADISE)<br>VALLEY, et al., )<br>)<br>defendants. ) | No. CIV 99-332-PHX-RCB<br>O R D E R |

Plaintiff McNeill filed a complaint in February 1999, raising a number of claims against a number of defendants. By order of December 13, 1999, the court dismissed the bulk of McNeill's complaint. Order (doc. #45). The only issue remaining is McNeill's claim that the Town of Paradise Valley (the Town) violated his civil rights by issuing him a civil traffic citation. The citation is said to have been issued on the certification of a police officer using a photo radar device. The Town moved for summary judgment and McNeill cross-moved. The court heard oral argument on March 12, 2001, at which time it took the matter under ad-visement.

Having carefully considered the parties' briefs and the evidence presented, the court now rules.

BACKGROUND

As described in the court's order of December 14,

1999, the Town uses photo radar to enforce its local speed ordinances. When a photo radar unit identifies a vehicle that is moving faster than the flow of traffic, the unit records the vehicle's speed and license plate and photographs the driver. The name of the vehicle owner is obtained from the Arizona Department of Motor Vehicles based on license plate records. The officer operating the photo radar unit certifies that he or she has reasonable grounds to believe that the persons who are to be issued tickets are the persons caught speeding. Def. SOF Ex. D (Coppola Dec l.). A computer generates a traffic ticket that refers to the officer's certification and the registration information. A traffic ticket is then mailed to the registered owner at the address appearing on the registration. See Def. SOF Ex. A (Warner Aff.) ¶ 3.

A traffic ticket and complaint was mailed to McNeill on August 26, 1997, asserting that on August 19, 1997, he drove his 1985 Ford 150 pick-up truck at a speed of 53 miles an hour in a 40 mile-an-hour zone. Def. SOF, Ex. E. The ticket represents that Officer Mike Coppola certified that he had "reasonable grounds" for believing that McNeill was the driver. McNeill did not personally receive the ticket, for in early September 1997, McNeill began working at a nuclear power plant in South Carolina. His daughter, apparently still resided in Arizona, called to inform McNeill of the traffic ticket and complaint. McNeill states that he called the municipal court and was told he would have to appear to enter a plea and that if he did not accept responsibility himself, he would have to identify the driver of the cited vehicle.

The undisputed evidence shows that McNeill then received a copy of the summons and complaint by certified mail on or about October 31, 1997. Notwithstanding the wording on the complaint explaining four ways of responding to the ticket, McNeill understood that he was re-

quired to appear in the Municipal Court in Paradise Valley, or else his driver's license would be suspended. McNeill Aff. ¶¶ 6, 17.

As a nuclear power worker, McNeill asserts that he is held to especially high standards of conduct, and he was concerned that if he were arrested, fined, or had his license suspended, his career would be destroyed. McNeill states that he resigned from his job in south Carolina and traveled to Arizona to appear for the hearing on the traffic citation. He alleges that he received documents from the Town indicating that the hearing was actually what he contends was an arraignment, but he fails to include the documents. [1] At this hearing, the traffic citation was dismissed.

McNeill's contention here is that his constitutional rights were violated when the Town issued him a civil citation on the basis of photo radar. While McNeill persists in asserting claims arising from the hearing in the Paradise Valley Municipal Court, this court has dismissed these claims, and McNeill has not taken the opportunity to amend his complaint or to file a motion for reconsideration. The court shall address only those claims not dismissed by the Order of December 14, 1997.

The court refers to McNeill's First Amended Complaint, filed June 23, 1999 (doc. #28), to identify these claims. [2] The caption and the prayer indicate that the law-

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[1] According to Fed. R. Civ. P. 56, the court may consider only admissible evidence when reviewing a motion for summary judgment. Under the Federal Rules of Evidence, mcNeill may not testify about the contents of documents; rather, he must produce the documents themselves. Because Mcneill's testimony about the effect of the documents is not admissible, the court cannot credit his allegations for purposes of this ruling.

[2] The docket indicates that one amended complaint was filed June 21, 1999 and another was filed June 23, 1999. They are the same document, but the court shall use the amended complaint last received by the clerk

suit is brought pursuant to 42 U.S.C. § 1983. The body of the complaint asserts that the Town's photo radar policy violated McNeill's fourth, Fifth and Fourteenth Amendment rights. Am. Compl. ¶ 18. McNeill also contends that when the Town required him to Compl. ¶ 18. McNeill also contends that when the Town required him to appear to contest the ticket, it violated his Thirteenth Amendment rights. Id. ¶ 25. He argues that the Town violated his right to personal autonomy as well. Id. · 26. McNeill states that his Eighth and Ninth Amendment rights were violated, but he does not link these violations to any specific action by the Town; the court believes he refers to the expense he incurred in traveling to Paradise Valley from South Carolina.

DISCUSSION

In determining whether to grant summary judgment, the court will view the facts and inferences from these facts in the light most favorable to the nonmoving party. Matsushita Elec. Co. v. Zenith Radio Corp., 475 U.S. 574, 577 (1986). The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment, the requirement is that there be no genuine issue of material fact. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). A material fact is any factual dispute that might affect the outcome of the case under the governing substantive law. Id. At 248. A party opposing a motion for summary judgment cannot rest upon mere allegations or denials in the pleadings or papers, but instead must set forth specific facts demonstrating a genuine issue for trial. See id at 250. Finally, if the nonmoving party's evidence is merely colorable or is not significantly probative, a court may grant summary judgment. See, e.g., California Architectural Build. Prods., Inc. v. Franciscian Ceramics, 818 F. 2d 1466, 1468 (9th Cir. 1987). Only admissible, properly

authenticated evidence may be considered on a Rule 56 motion. Canada v. Blain's Helicopters, 831 F. 2d 920, 925 (9th Cir. 1987).

Two preliminary matters must be addressed before the court reaches the summary judgment analysis. First, McNeill has filed a motion to compel. Second, he has objected to all of the Town's exhibits on one theory or another.

I. Preliminary Evidentiary Issues

A. Motion to Compel

On February 20, 2001, more than a month after he filed his response to the Town's motion for summary judgment, McNeill moved to compel complete responses to his second interrogatory. McNeill demanded verified answers, which he claims in his motion that the Town did not provide. Substantively, McNeill's interrogatory asked the Town to identify several persons who had some kind of role in the hearing in the Municipal Court. He also asked for the name of any police officer or other person who caused any photo radar traffic ticket complaint to be issued. McNeill asked for their work and residential addresses and their professional insurers, if any. He also asked the Town to identify other persons present at the Municipal Court during his hearing.

The Town identified the title of the persons expressly named by McNeill, but objected to releasing their residential addresses. It also identified its insurer. McNeill has redacted a portion of the Town's response without explaining the grounds for this elision. See Motion to Compel (doc. #), Ex. 3.

In opposing the Motion to Compel, the Town states that McNeill failed to comply with Local Rule 1.10 (j), which requires parties to consult prior to filing discover motions. The Town states that it is in in the process of having the interrogatory responses verified, that

residential addresses of its personnel are covered by a qualified privilege, and that it has made a good faith and reasonable effort to identify other persons in the courtroom at the time of the hearing. It insists that having to produce the traffic tickets of every defendant appearing before the Municipal court the same day as McNeill is overly burdensome and unlikely to lead to admissible evidence.

McNeill did not renew his complaint about the unverified interrogatory responses at the hearing. The court is not sure whether this remains a live issue, in light of the Town's representation that it would cure the verification problem. Assuming that McNeill still anticipates a ruling, his motion is denied. Failure to observe the consultation requirement set out in Local Rule 1.10 (j) is grounds for denying the motion without prejudice. Moreover, it is abundantly clear that McNeill's interrogatory request will not lead to evidence admissible on the issue in this court. The court reiterates that it has dismissed McNeill's claims arising from his experience at the municipal court hearing. Accordingly, McNeill has shown no need for the residential addresses of the Town personnel present at that hearing, no need for the tickets of other defendants present that day, and no need to ascertain the identify of other persons present. The motion to compel is denied.

B. Evidentiary Objections

McNeill objects that Defendant's exhibits D, E, G, H, J, K, L, M and N, have not been "verified" or "certified by any court." Most of these objections may be dealt with summarily. Exhibit E, a copy of the ticket issued to McNeill, speaks for itself. Exhibits G. H, K, L, M, and N are pleadings and orders issued in the municipal court proceedings and they are irrelevant. Exhbit J is a copy of a certified mail receipt McNeill signed to receive a subpoena to appear in Paradise Valley on the trial date of December 18, 1997. It is

also irrelevant. McNeill's objections to exhibits E, G, H, J, K, L, M and N are overruled as moot.

Exhibit D is a different story. This document purports to be Officer Coppola's certification that he had reasonable grounds to believe McNeill was speeding, which is signed but not dated. There is no affidavit testimony explaining where the document came from. Nor does the certification suggest any link to McNeill's truck. Although the document has lines for notarization, it was never notarized. In pertinent part, Coppola's certification reads:

> On August 19, 1997, I parked the speed Camera unit and, using correct procedures, operated the speed Camera unit to monitor traffic.
>
> I certify that upon reasonable grounds I believe that each of the defendants complained against on this date upon the basis of the Speed Camera committed the act described contrary to law and I have caused a copy of the complaint to be served on each defendant.

Def. Ex. D.

In response, the Town "defends its reliance" on this document (and the other exhibits):

> based on the fact that these are all certified documents that were contained in the court's File of the Town of Paradise Valley; these documents were certified by the Court Services Supervisor and were disclosed to Plaintiff in August 2000.

DSSOF (doc. #112). The Town submits a letter from the Court Services Supervisor, certifying that "the attached 81 pages are a true copy of all records for case number 223473A." DSSOF, Ex. B (Rasmussen letter of August 16, 2000). Unfortunately, the letter was detached from the 81 pages it once accompanied. Therefore, the court ordered Defendant to produce the 81-page file certified by the Court Services supervisor so that the court could confirm the

provenance of Exhibit D. Order of March 13, 2001.

Defendant complied on March 15, 2001. Exhibit D is not among the 81-page file. In order for the certification to support issuance of a ticket to McNeill, the Town must establish that the certification was made in reference to McNeill's truck and kept in a way to maintain the connection between Coppola's radar gun reading and McNeill's truck. Without authentication, Exhibit D cannot be admitted as evidence of Officer Coppola's certification. For the purpose of the pending motions, McNeill's objections to Exhibit D is granted. [3]

McNeill also objects that exhibits a, B. C, F and I are irrelevant. McNeill does not analyze the documents to establish his point of view. Defendants have discussed the relevance of each document. See DSSOF at 2. The court has examined the exhibits and agrees with Defendant that the challenged exhibits are at least somewhat relevant. McNeill's objections to exhibits A, B, C, F and I are denied.

II. Constitutional Claims

Defendant has repeatedly characterized McNeill's claim against it as a Section 1983 claim. See, e.g., Motion for summary Judgment (doc. #101) at 3. In its dispositive motion, the Town defends its photo radar practice on the merits. McNeill's cross-motion asserts that Fifth, Eighth, Ninth and fourteenth Amendment claims accrued as a result of

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[3] McNeill also argues that a certification does not provide a sufficient basis for issuing a ticket because the certifying officer cannot be held accountable for perjury. This argument would have merit but for an Arizona statute. Arizona law describes that certification is sufficient to issue a ticket, A.R.S. § 28-1561 (A), and that a false certification exposes an officer to liability for perjury, A.R.S. § 28-1561 (B). Therefore, the certification subjects the officer to perjury prosecution, even though its face does not indicate that it is sworn testimony. His objection to Exhibit D on these grounds is denied.

of how the Town treated him. In response, the Town contends that these claims are based on specific acts of individual Town employees and do not reflect a policy or custom. It argues that as a municipality, it cannot be held liable on these claims. Response at 5. At oral argument, this contention was reasserted.

A. Fourth Amendment

In moving for summary judgment, the Town contends that its photo radar citations for civil traffic violations are issued on legally sufficient grounds. The parties dispute what standard of police justification should govern photo radar citations. McNeill contends that officers must develop "probably cause' to believe that speeding drivers are the registered owners of the vehicles they occupy. The Town urges a lesser standard. The parties also dispute whether the photo radar system generates enough information to justify a citation. The court shall first outline the requirements of the fourth Amendment before discussing the sufficiency of the evidence presented here.

Whether a law enforcement officer has sufficient grounds for stopping someone depends on the nature of the intrusion, for the law recognizes a distinction between arrests and other police stops. In order to effect an arrest, the federal Constitution requires law enforcement officers to establish "probable cause" to believe that the suspect has committed or is about to commit an offense. See, e.g., Michigan v. DeFillippo, 443 U.S. 31, 99 S. Ct. 2627 (1979). Intrusions that are less invasive than arrests, by contrast, are justifiable on the basis of "reasonable suspicion." See Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868 (1968); Brown v. Texas, 443 U.S. 47, 99 S. Ct. 2637 (1979). The standard for m making a traffic stop is an "articulable and reasonable Suspicion." Delaware v. Prouse, 440 U.S. 648, 663, 99 S. Ct. 1391, 1401 (1979); United States v. Lopez-Soto, 205 F. 3d

1101, 1104-05 (9th Cir. 2000).[4] The reasonableness of a seizure less intrusive than an arrest depends on the balance between the public interest and the individual's right to freedom from arbitrary interference by law enforcement officers. Dunaway v. New York, 442 U.S. 200, 209 99 S. Ct. 2238, 2255 (1979). Consideration of the constitutionality of such seizures involves a weighting of the gravity of the public concerns, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty. Brown, 443 U.s. at 51, 99 S. Ct. at 2640; Rise v. State of Oregon, 59 F. 3d 1556, 1560 (9th Cir. 1995). In order for a traffic stop to be the basis for liability under section 1983, it must be unreasonable under the circumstances. Brower v. County of Inyo, 489 U.S. 593, 109 S. Ct. 1378 (1989).

The Fourth Amendment protections against unreasonable searches and seizures fully apply in civil contexts. See Soldal v. Cook county, Ill., 506 U.s. 56, 67 n. 11, 113 S. Ct. 538, 546 n. 11 (1992). The town does not seriously dispute that its civil traffic citations must conform to fourth Amendment requirements. [5] It maintains that the standard for traffic stops, not arrests, should apply, because the

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[4] Some uncertainty about the traffic stop standard has been injected by a remark of the supreme court, which recently stated that "(a)s a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." Whren v. United States, 517 U.S. 806, 810, 116 S. Ct. 1769 (1996). Whren could be read to require traffic stops to meet the "probable cause" standard, where previously "reasonable suspicion" sufficed. The

[5] At oral argument, counsel for the Town suggested for the first time that photo radar citations do not rise to the level of intrusions, and therefore do not meet the threshold forfourth Amendment analysis. The Town offered no legal justification for this theory and the court finds it untimely. It shall not be explored further in connection with these motions.

mailed citations do not involve physical restraint of the cited driver, nor is the driver subject to police custody

The Town relies on a variety of sources of state law for the proposition that issuance of a civil traffic citation in Arizona is not an arrest and therefore not subject to "probable cause" analysis.[6] The Ninth Circuit has deferred to a state's characterization of traffic citations in determining the standard of police suspicion to support issuing a citation. See Easyriders Freedom F.I.G.H.T. v. Hanningan, 92 F. 2d 1486, 1498 (9th Cir. 1996). A state cannot authorize standards lower than the constitutional floor, however. See Knowles v. Iowa, 525 U.S. 113, 119 S. Ct. 484 (1998). Accordingly, the terms used by the state statutes and approved by state courts are informative but are not dispositive of the constitutional issue.

The court is aware of no federal case law deciding whether issuance of a civil traffic citation effects an arrest. Arguably, issuing a citation has wider repercussions than a mere investigatory traffic stop. Nevertheless, for the reason that follows, the court concludes that the traffic stop "reasonable suspicion" standard and not the arrest

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Ninth Circuit has held that Whren does not effect a change in previously settled law. Lopez-Soto, 205 F. 3d at 1104. Accordingly, Ninth Circuit decisions continue to assess whether reasonable suspicion has been established. See, e.g., United States v. Rojas-Millan, 234 F. 3d 464, 468 suspicion." Delaware v. Prouse, 440 U.S. 648, 663, 99 S. Ct. 1391, 1401 (1979); United States v. Lopez-Soto, 205 F. 3d (9th Cir. 2000); United States v. Twilley, 222 F. 3d 1092, 1095 (9th cir. 2000).

[6] A statute provides that to make an arrest, the person to be arrested must be actually restrained or submit to the custody of the person making an arrest. A.r.s. § 13-3881 (a). The Arizona Court of Appeals has held that an officer need only have reasonable suspicion to issue a civil citation for traffic violations. State v. Boudette, 791 P. 2d 1063, 1067-68 (Ariz. App. 1990); see also State v. Ossana, 2001 WL 197936, *2 (Ariz. App. 2001); (officer may stop car to issue a civil citation if he has a reasonable belief that a traffic violation has occurred).

"Probably cause" standard applies to photo radar citations
The Supreme Court has held that in order to stop a driver, a law enforcement officer must have a reasonable suspicion "that a traffic violation has occurred. Whren v. United States, 517 U.S. 806, 818, 116 S. Ct. 1969, 1776 (1996). Stopping drivers arbitrarily and without the premise of a specific traffic enforcement rationale violates of the Fourth Amendment. See Prouse, 440 U.S. at 663, 99 S. Ct. at 1401. Thus, each traffic stop must be based on the belief that a citable violation has occurred, and traffic stops need only be premised on "reasonable suspicion" that the violation has occurred. The court finds no plausible grounds for holding that an officer must have "reasonable suspicion" to pull a driver over but must have "probably cause" to actually issue a citation. Accordingly, the court rejects McNeill's theory that the State must have "probably cause" to send photo radar citations and adopts "reasonable suspicion" as the appropriate criterion.

The next question is whether the State's practice of matching the license plate of speeding vehicles with registration information is enough to establish "reasonable suspicion" that the speeding motorist is the registered owner. Paradise Valley has established a rebuttable presumption that the registered owner of a vehicle is its driver. See Paradise Valley Town code § 11-2-18(a). Given the civil nature of the challenged citation, such a measure is permissible. See City of Portland v. Kirk, 518 P. 2d 665 (1974) (approving a rebuttable presumption that registered owner of vehicle is the person who parked the vehicle); see also City of Seattle v. Stone, 410 P. 2d 583, 585 (Wash. 1966) (approving a rebuttable presumption that the registered owner of a vehicle is responsible for parking it illegally). The Ninth Circuit has recently approved a rebuttable pre
sumption that the person who owns property controls it, and authorized civil penalties to flow from an unrebutted

presumption. See Rucker v. Davis, 327 F. 3d 1113, 1127 (9th Cir. 2001) (en banc) (approving a rebuttable presumption that a tenant controls activities within his apartment, and, if the presumption is not rebutted, may be evicted for allowing unlawful activities). Thus, in theory, the Town's photo radar citation system comports with constitutional standards.

Alternatively, to the extent that photo radar citations should be viewed as more similar to highway checkpoints than traffic stops, analysis under the standard set forth in Brown v. Texas, 443 U.S. 47, 99 S. Ct. 2627 (1979), yields the same result. To determine the constitutionality of such intrusions, the court balances the public interest of the intrusion against the infringement of individuals' privacy interests. The public interest in highway safety is a strong one. See Michigan Dep't of State Police v. Sitz, 496 U.S. 444, 451, 110 S. Ct. 2481, 2485 (1990) (recognizing public interest in curtailing traffic injuries). The State has submitted statistics of the number of accidents each year in Paradise Valley for the years 1987-1999. DSOF, Ex. B. The statistics reflect a trend toward decreasing number of accidents since photo radar was introduced in 1987. Accordingly, there is a legitimate basis for the Town's belief that deploying photo radar furthers the public welfare.

By comparison, the intrusion on individual drivers is minimal. First, the roads are public spaces and being viewed while about on them does not implicate individual privacy interests. See G. M. Leasing Corp. v. United States, 429 U.S. 338, 97 S. Ct. 619 (1977). Second, drivers are not detained, even momentarily. Photo radar has the virtue of sparing drivers the inconvenience and embarrassment of the siren-flashing-lights drama of a standard traffic stop. Third, the court notes that only speeding drivers have cause for concern, for only they are seized by the issuance of a citation, and only after an individualized basis has

been established by the radar and photograph. Cf. City of Indianapolis v. Edmond, 121 s. Ct. 447, 455 (2000) (rejecting checkpoint to determine illegal activity without individualized suspicion). In Sitz, the Supreme Court addressed the "subjective intrusion" of a traffic enforcement method that subjected every driver to a brief delay. 496 U.S. at 4521, 110 S. Ct. at 2486. "The 'fear and surprise' to be considered are not the natural fear of one who has been drinking over the prospect of being stopped at a sobriety checkpoint but, rather, the fear and surprise engendered in law-abiding motorists by the nature of the stop." Id. Drivers in compliance with the Town's speed limit have no grounds for apprehension when they pass through a photo-radar enforcement zone. Fourth, the burden on a car owner who receives a civil speeding citation when s/he was not the driver is slight. Car owners who receive tickets when relatives, friends, permittees or subsequent owners of the vehicle trip the photo radar device can avoid the citation by responding through the mail. The court concludes as a theoretical matter, that the photo radar citation system employed by the Town does not violate the Fourth Amendment rights of motorists.

In this case, the speeding truck was registered in McNeill's name. He has not disputed his ownership, or that the truck was speeding. While he argues that the citation was not signed by the issuing officer, this fact is of no importance. A signed certification backs up the computer-printed citation. Because the court excluded Defendant's Exhibit D, however, there is no evidence of a certification to support McNeill's citation. Whether McNeill's traffic citation was issued on the basis of a legally sufficient certification remains disputed, and it is undoubtedly material. Therefore, the court denies the cross-motions for summary judgment on this claim.

B. Fourteenth Amendment

McNeill argues that the Town's photo radar system violates the Equal Protection Clause of the fourteenth Amendment, "for in Paradise Valley a citizen may be sum moned to appear on a Photo Radar complaint with hone of the protections afforded other motorist(s) inside and outside the town limits by the Arizona Legislature in Title 28, Chapter 3, § 10621" Cross-Motion at 6. In response, the Town contends that all motorists passing through Paradise Valley are treated the same under the photo radar enforcement policies, and that its decision to implement photo radar satisfies rationale basis scrutiny.

Where a government distinction is challenged, and it does not burden a fundamental right or target a suspect class, it will be upheld "so long as it bears a rationale relation to some legitimate end." Vacco v. Quill, 521 U.S. 793, 799, 117 S. Ct. 2293 2297 (1998) (quoting Romer v. Evans, 517 U.s. 620, 631, 116 S. Ct. 1620, 1627 (1996) ). The town assumes that no fundamental right is burdened.

The Supreme court has recognized a fundamental right to interstate travel, see Attorney General of New York v. Soto-Lopez, 476 U.S. 898, 903, 106 S. Ct. 2317 (1986), and a fundamental right to free movement, see Nunez by Nunez v. City of San Diego, 114 F. 3d 935, 944 (9th Cir. 1997) (citing Papachristou v. City of Jacksonville, 405 U.s. 156, 164, 92 S. Ct. 839, 844 (1972) ). There is, however no fundamental right to drive a motor vehicle on public roads. Miller v. Reed, 176 F. 3d 1202, 1206 (9th Cir. 1999). The fundamental right to travel is not burdened by restrictions on a particular mode of transportation. Id. In this case, the court rejects any suggestion that photo radar burdens a fundamental travel right, for there is not evidence that motorists' ability to travel is burdened by a speed limit. cf. Nunez by Nunez, 114 F. 3d at 944 (finding that city's juvenile curfew ordinance unconstitutionally burdened minors' fundamental right to movement).

As far as the rationality of the Town's law enforcement choice is concerned, photo radar is correlated with decreasing traffic accidents, and the City Council could rationally attribute this salutary development to the use of photo radar. McNeill cannot prevail on his equal protection theory. The Town's motion for summary judgment on this claim is granted.

C. Thirteenth Amendment

In his cross-motion, McNeill contends that his Thirteenth Amendment rights were violated when the Town "compelled" him to appear to identify the driver of his vehicle, causing him to spend significant time and money. In response, the Town argues that municipal liability cannot be imposed, because McNeill describes an isolated incident resulting from his interaction with a municipal employee. The Town further argues that McNeill's assertion that he was compelled is not credible because it contradicts the written citation, which provides a number of options for dealing with the ticket, including some by mail. The Town argues that McNeill's appearance was his own choice.

In order to hold a municipality liable, a plaintiff must show that he was deprived of a constitutional right by someone acting under the "color of law" and that the deprivation resulted from an established municipal policy or custom. Monnel v. Dep't of Social Services, 436 U.s. 658, 694, 98 S. Ct. 2018, 3027 (1978). There is no evidence before the court to support a finding that the Town has a policy or custom of requiring cited drivers to appear in the municipal court.

Assuming without deciding that the Thirteenth Amendment can be asserted in a Section 1983 action, the court finds that McNeill's claim would fail on the merits besides. There is no genuine issue of material fact on the issue of compulsion. McNeill cannot rely on his own affidavit

starting he felt compelled in the face of the traffic citation document, which does not require his appearance. The face of the traffic ticket and complaint informs the recipient about the violation and requires the recipient to return an acknowledgement of receipt. The form sets out four options for the recipient: (1) assert that someone else was driving or that someone else owned the vehicle at the time of the violation; (2) pay the fine; (3) attend traffic safety class, if eligible; or (4) contest the violation by showing up at the time designated on the summons to plead not responsible or not guilty. It is patently clear that McNeill decided to appear in Paradise Valley Municipal Court because he had an axe to grind about photo radar, not because he was required to do so. McNeill is entitled to assert what he believes to be his rights, but he is not entitled to compensation for the costs of doing so.

D. Right to "Be Free From Government Interference"

McNeill argues that the Town's photo radar system intrudes unlawfully on his "right to be left alone." In response, the Town maintains that there is no constitutional right to be free from botherment, particularly on a public street, citing Schenck v. Pro-Choice of Western New York, 519 U.S. 357, 383, 117 S. Ct. 855 (1997), and no generalized constitutional right to privacy, citing Katz v. United States, 389 U.S. 347, 350-51, 88 s. Ct. 507, 510 (1967).

Schneck is inapposite, for it concerns a putative right to be free from private attempts to persuade, and it does not address privacy intrusions by municipal authorities. 519 U.s. at 383, 117 S. Ct. at 870.[7] But it is true that the Constitution does not guarantee the right to go through life insulated from contact with the government. For example, attempts to find such a right in the First Amendment have been rejected. The First Amendment does not prevent the

government from collecting intelligence data on citizens, where the surveillance does not cause "specific objective harm or a threat of specific future harm." Laird v. Tatum, 408 U.S. 1, 14, 92 S. Ct. 2318, 2326 (1972); cf. Presbyterian Church v. United States, 8870 F. 2d 518, 522 (9th Cir. 1989).

Instead of guaranteeing freedom from all government intrusions, the Constitution has been read to limit only unreasonable intrusions. Police surveillance is tested as a "search" under the fourth Amendment by asking (1) whether an individual had a subjective expectation of privacy that was intruded on, and (2) whether society is prepared to recognize that expectation as reasonable. Texas v. Bond, 529 U.S. 334, 338, 120 S. Ct. 1462, 1465 (2000). As a matter of law, citizens are afforded less privacy in their cars. "A person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another." United States v. Knotts, 460 U.S. 276, 281, 103 S. Ct. 1081, 1085 (1983). Accordingly, McNeill had no privacy interest driving through Paradise Valley that the Town's photo radar violated. The Town's motion for summary judgment on this claim is granted.

E. Eighth and Ninth Amendment

While McNeill has listed violations of the Eighth and Ninth Amendment in his complaint, he has failed to demonstrate that he has satisfied the elements needed to make out a claim under either. The court reads the Town's argument about municipal liability to target these claims as well. Any hardship McNeill suffered as a result of his traffic citation has not been shown to have resulted from a

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[7] Schenck, it will be recalled, addressed the terms of an injunction against protesters who, the district court found, harassed persons attempting to enter an abortion clinic.

policy of the Town's. Therefore, summary judgment on these claims is granted to the town.

III. Motion for Return of Security

By order of June 21, 1999, the court required McNeill to deposit $1200.00 with the clerk of the Court as security to cover the costs of anticipated depositions. McNeill contends that he would like to have access to the funds in order to conduct the depositions. The Town has objected to granting the motion, stating that the security is necessary. The court understands the Town's position to be that security is necessary only if this matter goes forward. Since the Fourth Amendment claim survives the cross-motions for summary judgment, McNeill is not yet entitled to get his money back.

THEREFORE IT IS ORDERED, denying Plaintiff's Motion to Compel (doc. #108).

IT IS FURTHER ORDERED, granting in part and denying in part Defendant's Motion for Summary Judgment (doc. #101).

IT IS FURTHER ORDERED, denying Plaintiff's Cross-Motion for Summary Judgment (doc. #105).

IT IS FURTHER ORDERED, denying Plaintiff's Motion for Order Returning Security of Cost (doc. #109) and denying Plaintiff's Motion to Accelerate (doc. #110) as moot.

IT IS FURTHER ORDERED setting a status hearing on May 14, 2001 at 2:00 p.m. at which time the further processing of this case will be discussed. Either party may appear telephonically.

DATED this 6 day of April, 2001.

/s/ Robert C. Broomfield
Senior United States District Judge

Copies to counsel and parties of record.